

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Health	(2) MEETING DATE 1/29/2013	(3) CONTACT/PHONE Curt Batson 781-5550	
(4) SUBJECT Consideration of a request for direction on three options for amending/replacing San Luis Obispo County Code Chapter 8.13 Land Application of Treated Sewage Sludge/Biosolids.			
(5) RECOMMENDED ACTION It is recommended that the Board: Provide direction with regards to the following three options: 1. Extend the existing Land Application of Treated Sewage Sludge/Biosolids interim ordinance until March 2017; 2. Make the existing Land Application of Treated Sewage Sludge/Biosolids interim ordinance the permanent biosolids ordinance; 3. Move forward with the draft biosolids ordinance with the intention of permanently replacing the existing interim biosolids ordinance.			
(6) FUNDING SOURCE(S)	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. _____) <input checked="" type="checkbox"/> Board Business (Time Est. _____)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)  N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP	(15) BUSINESS IMPACT STATEMENT?  No	(16) AGENDA ITEM HISTORY  <input checked="" type="checkbox"/> N/A    Date _____	
(17) ADMINISTRATIVE OFFICE REVIEW  Reviewed by Leslie Brown			
(18) SUPERVISOR DISTRICT(S) All Districts -			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Jeff Hamm, Health Agency Director  
Penny Borenstein, M.D., M.P.H., Health Officer/Public Health Administrator, Public Health Department

DATE: 1/29/2013

SUBJECT: Consideration of a request for direction on three options for amending/replacing San Luis Obispo County Code Chapter 8.13 Land Application of Treated Sewage Sludge/Biosolids.

## **RECOMMENDATION**

It is recommended that the Board:

Provide direction with regards to the following three options:

1. Extend the existing Land Application of Treated Sewage Sludge/Biosolids interim ordinance until March 2017;
2. Make the existing Land Application of Treated Sewage Sludge/Biosolids interim ordinance the permanent biosolids ordinance;
3. Move forward with the draft biosolids ordinance with the intention of permanently replacing the existing interim biosolids ordinance.

## **DISCUSSION**

### *Background*

Since 1998, the issue of the land application of biosolids (for ease of readership, "treated sewage sludge/biosolids" is hereafter referred to as "biosolids") has been the subject of two separate efforts to guide public policy in San Luis Obispo County. Both efforts included public and local agency participation in working groups. Concern over a proposal in 1998 to apply biosolids to ranch property near San Miguel led the County Health Commission to form a task force. The Health Commission Task Force explored wastewater treatment and disposal issues as it related to federal, state and local regulations, with specific interest in the land application of biosolids.

On February 8, 2000, the Board directed the Public Health Department to convene a public working group to consider options for managing the land application of biosolids. Pursuant to the Board's direction, the Public Health Department convened a public working group that was referred to as the San Luis Obispo County Treated Sewage Sludge/Biosolids Land Application Task Force. The Task Force recommended creation of a local ordinance establishing more stringent requirements for the quality of land applied biosolids, as well as local control and oversight of how, when and where such material may be applied. The Task Force completed its recommendations on October 26, 2001. Presentations were made to the Health Commission on December 10, 2001, and the Planning Commission on December 13, 2001, and January 24, 2002.

On March 12, 2002, the Board directed the Public Health Department to draft a local ordinance regulating the land application of biosolids based on the recommendations contained in the Task Force report. In order to comply with Board direction, the Task Force reconvened to draft an interim ordinance that would, among other things, limit the acceptance or processing of new land application projects beyond historical amounts of exceptional quality biosolids until a local ordinance is completed.

On March 12, 2003, the original interim ordinance was completed and sent to the Environmental Division of the Planning Department for California Environmental Quality Act (CEQA) review. The CEQA review process was completed on

August 29, 2003, where it was determined that the ordinance could not have a significant adverse effect on the environment and a Negative Declaration was issued.

The proposed interim ordinance was then introduced to the Board for approval in February of 2004, and subsequently enacted on March 2, 2004.

With the March 2, 2004 interim ordinance set to expire on March 2, 2006, the ordinance was extended by the Board for 48 months until February 28, 2010, or until a permanent ordinance could be developed.

The Board voted on April 21, 2009 to defer the proposed permanent ordinance development process due to concerns regarding the estimated cost of environmental review associated with the CEQA process. The cost of an environmental review was estimated to be \$200,000. As a result, the Board decided to amend the existing interim ordinance for another 48 months or until a permanent ordinance is enacted. The Board also directed the Health Agency to work with the county governing entities that operate wastewater treatment plant facilities to determine if those entities would be willing to share in the cost of the permanent ordinance environmental review.

#### *Current Status*

Informal discussions with waste water treatment facility operators have indicated that they are concerned with a local ordinance that is too restrictive and are not interested in sharing in the cost of environmental review of a permanent ordinance.

On March 9, 2010 the Board approved Ordinance 3023: Moratorium on the Land Application of Treated Sewage Sludge/Biosolids. The moratorium established by the ordinance was to remain in effect until such time as a permanent ordinance regulating the land application of biosolids and exceptional quality biosolids was enacted by the Board, or 48 months from the enactment of the ordinance, whichever occurred first. A permanent ordinance has not been enacted and the current interim ordinance will expire on March 9, 2014.

The interim ordinance was developed to limit the acceptance or processing of new land application projects beyond historical amounts of exceptional quality (EQ) treated sewage sludge until a local ordinance could be completed. The purpose of the ordinance is to establish an interim moratorium on the land application of biosolids other than exceptional quality (EQ). Further, it is the intent of this interim moratorium to assure the quantity of exceptional quality (EQ) biosolids applied and distributed in San Luis Obispo County shall not exceed historic levels.

The ordinance:

- "Biosolids" as used in this ordinance excludes biosolids composted with other organic products such as green waste and sold in bulk form.
- Defines biosolids, exceptional quality biosolids and persons regulated by the ordinance. Persons include any individual firm, association, partnership, political subdivision, government agency, municipality, public or private corporation, or any other entity whatsoever.
- Remains in effect for 48 months from its enactment or until a permanent ordinance is adopted, which ever occurs first.
- Requires notification of the Public Health Department, Environmental Health Services Division 30 days prior to the land application of biosolids exceeding or equaling 5 cubic yards.
- Places a cap of 1,500 cubic yards on the cumulative total of exceptional quality biosolids that can be land applied in any 12-month period beginning with the adoption of this ordinance.
- Allows unused capacity to be carried over for a 12-month period.

Composted biosolids in 40-pound bags are currently available at most retail nurseries and large hardware stores with nursery sections. This material can be applied by anyone without regulatory oversight. Consistent with the availability of commercially bagged composted biosolids, the ordinance exempts the land application of biosolids used in compost. This

composted material is comprised of biosolids mixed with green waste. Laboratory tests conducted on locally composted biosolids have shown the product to be significantly below the Federal 503 Regulation limits, including levels for heavy metals, which have been a notable concern. Done properly, the use of high quality biosolids in compost has been shown to be a safe and effective way to recycle this natural resource.

The original interim ordinance was sent to the Environmental Division of the Planning Department for California Environmental Quality Act (CEQA) review. The CEQA review process was completed where it was determined that the ordinance could not have a significant adverse effect on the environment and a Negative Declaration was issued.

The land application of biosolids continues to be a controversial issue. Studies on the risk to public health and the environment are ongoing. Studies regarding potential negative effects from constituents in pharmaceuticals, over-the-counter medications and personal care products in biosolids are being conducted. Other studies characterizing the risk of pollutants such as barium, manganese, silver, dioxins and others are scheduled to be done in the next couple of years. Moving forward with a permanent ordinance at this time will likely result in a reconsideration of the ordinance requirements as new data becomes available. The risk to public health and the environment continues to be studied and debated at the federal level. Determining the appropriate level of CEQA review will depend upon the findings of these studies. Therefore, it may be premature at this time to move forward with a permanent biosolids ordinance. However, the lack of a permanent ordinance could have unforeseen consequences as the amount of biosolids generated in other counties continues to increase and waste water treatment jurisdictions look for ways to utilize or dispose of this material. Without a permanent ordinance that regulates the land application of composted biosolids as well as biosolids that are not composted, San Luis Obispo County could see an influx of composted biosolids without any oversight. In this uncertain environment, it is the recommendation of staff that the existing Land Application of Treated Sewage Sludge/Biosolids interim ordinance be extended until March 2017. The Environmental Division of the Planning Department will evaluate the interim ordinance to determine if the existing Negative Declaration (No. ED03-149) is appropriate. Since the enactment of the ordinance in 2004, no land application projects utilizing biosolids equal to or exceeding five cubic yards have occurred in the unincorporated area of the County. In addition, no complaints have been received associated with land applied biosolids. If Environmental Health becomes aware of a significant increase in land application projects or complaints associated with composted biosolids we will return to the Board for further direction.

#### Option 1

##### **Extend the existing Land Application of Treated Sewage Sludge/Biosolids interim ordinance until March 2017.**

This option would not change the existing ordinance except to extend the expiration date to March 9, 2017. In 2016, the Public Health Department will consider the replacement of the interim ordinance with a permanent ordinance. Environmental review will be considered at that time.

However, if the Board wants to move forward with a permanent ordinance, there are two options to consider

#### Option 2

##### **Make the existing Land Application of Treated Sewage Sludge/Biosolids interim ordinance the permanent biosolids ordinance.**

This option would remove the expiration date from the interim ordinance but otherwise it would remain unchanged. The Environmental Division of the Planning Department will evaluate the ordinance for appropriate CEQA review.

#### Option 3

##### **Move forward with the draft permanent biosolids ordinance with the intention of replacing the existing interim biosolids ordinance.**

This option is consistent with prior Board direction to develop a local ordinance regulating the land application of biosolids that establishes more stringent requirements for the quality of land applied biosolids as well as local control and oversight of how, when and where such material may be applied. This option would replace the existing interim ordinance. The first draft of this ordinance has been through public review and comment and been redrafted. It creates a comprehensive regulatory infrastructure requiring permits for land application of composted biosolids and biosolids that are not composted. CEQA review would also be necessary for this option.

In summary, the staff recommendation is to amend the expiration date for Ordinance 3023: Moratorium on the Land Application of Treated Sewage Sludge/Biosolids from March 9, 2014 to March 9, 2017.

## **OTHER AGENCY INVOLVEMENT/IMPACT**

County Counsel's Office has reviewed and approved the ordinance as to form and legal effect.

Numerous other state and local agencies, as well as private citizens, non-profit agencies and other interested parties were involved in the development of the original interim ordinance. They include the Air Pollution Control District, Agricultural Commissioners Office, Cal Poly, Ecoslo, Environmental Division of County Planning Department, Center for Sludge Information, Regional Water Quality Control Board, San Luis Obispo County Farm Bureau, City of San Luis Obispo Wastewater Treatment Plant, South County Wastewater Treatment Plant, Synagro, University of California Cooperative Extension, San Luis Obispo County Health Commission, Sierra Club and other interested parties.

## **FINANCIAL CONSIDERATIONS**

There are no financial considerations related to the enactment of the interim ordinance.

## **RESULTS**

Since the enactment of the ordinance in 2004, no land application projects utilizing biosolids equal to or exceeding five cubic yards have occurred in the unincorporated area of the County. In addition, no complaints have been received associated with land applied biosolids.

Approval of the recommendation would result in the continuation of an interim ordinance that allows for the recycling of a natural resource at amounts that do not exceed historic levels of land application, protects the public health and the environment, and allows for the notification of the Public Health Department when biosolids are proposed to be applied to land.

## **ATTACHMENTS**

1. Current Ordinance for Land Application of Biosolids
2. Biosolids Negative Declaration
3. Draft permanent Ordinance